(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P.No. 1487 /2005

PETITIONER Ashok Shrivastava, aged about 48 years, S/o. Late Shri K.P.Shrivastava, resident of Link Road, Bilaspur, Tahsil and District Bilaspur (C.G.)

VERSUS

RESPONDENTS : 1) State of Chhattisgarh Through Secretary, (Transport,) Raipur

: 2) The Regional Transport Officer, Bilaspur (C.G.)

: 3) The Collector, Bilaspur (C.G.)

: 4) The Superintendent of Police Bilaspur (C.G.).

C.R. No. 1598/05
Presented by Shri C. P. Yadav
dated 13-04-05

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

(S5) 1

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITIO NO. 1487 OF 2005

Ashok Shrivastava

Versus

State of Chhattisgarh and others

ORDER

For consideration

Sd/-

Judge
27-4-2005

Hon'ble Shri V.K. Shrivastava, J

I agree

Sd/-
V.K.Shrivastava
Judge

Post for 27-4-2005

Sd/-
Fakhruddin
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITIO NO. 1487 OF 2005

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Versus

State of Chhattisgarh and others

CORAM:
Hon'ble Shri Justice Fakhruddin and
Hon'ble Shri Justice V.K.Shrivastava, JJ

Shri Satish Chandra Verma, counsel for the petitioner.

Shri Prashant Mishra, Addl. Advocate General with Shri Ashish Shukla, Govt. Advocate for the State.

O R D E R

Heard.

2. Shri Verma, learned counsel for the petitioner contended that the petitioner has preferred the instant petition in the public interest. He further contended that the challenge in this petition is a decision taken by respondent No.1 to shift the Regional Transport Office from Nehru Complex, Vyapar Vihar to Old State Transport Depot at Bus Stand, Bilaspur. He also contended that this would adversely affect the traffic system. Learned counsel also contcndcd that it would bc inconvcnicnt to thc public at large.

3. During the course of arguments, it is also contended by learned counsel for the petitioner that the proposed area is not suitable because there are 12 hotels, 9 complexes, 8 colleges, 11 hospitals, 4 Banks, 11 restaurants, etc. It is

also contended that the heavy vehicles are required to enter into the R.T.O. campus for checking and fitness certificate.

4. On 13-4-2005 at the time of mentioning of the case for its early hearing, it was directed that one extra copy of the petition alongwith annexures be supplied to Shri Prashant Mishra, Addl. Advocate General, who was directed to seek instructions.

5. Shri Mishra, learned Addl. Advocate General contended that so far as decision of shifting of R.T.O. is concerned, it is a policy decision and is taken in larger public interest. It is further contended that the decision to shift the office of Regional Transport Officer, Bilaspur is taken last year. The M.P. State Road Transport Corporation was functioning at the time of reorganization of the State. After reorganization, the State of Chhattisgarh decided not to establish the State Road Transport Corporation and as such its infrastructure, building, etc. had to be given to other Departments. It is also contended that the decision was taken in August, 2004 and the matter was being processed.

6. It is submitted that on 28-8-2004 a meeting was convened by the Commissioner Transport and decision was taken to accommodate the office of R.T.O. to Bilaspur Depot. On 3-12-2004, the Regional Transport Officer was directed to take over the possession of vacant premises of Depot for R.T.O. office. It is also submitted that on 22-1-2005 a letter was sent by R.T.O. to provide the map, khasra number of

Depot office. On 28-1-2005, a letter was written by R.T.O. to obtain the premises Depot office for R.T.O. office on rent. It is further submitted that on 5-2-2005, the Commissioner Transport issued instructions regarding taking possession of Depot office. On 21-2-2005, the Chief General Manager, Chhattisgarh Infrastructure Development Corporation instructed the Divisional Manager, C.I.D.C. Bilaspur to execute the agreement for land and premises for R.T.O. at the rate fixed by the Collector. On 4-3-2005, the S.D.O., P.W.D., Bilaspur was asked to survey for determination of the rent of Depot office. On 7-3-2005 a letter was sent by the R.T.O. office, Bilaspur to Divisional Manager, C.I.D.C. to give the possession of land and premises. It is further stated that on 15-3-2005, it was informed to the S.D.O. that the survey has been completed. It is further stated that on 27-3-2005/29-3-2005, after agreement, the Divisional Manager, C.I.D.C. handed over the possession of land and premises to the R.T.O.

7. Ultimately when the premises of Kharang Division was given to the High Court, the said Division was required to be shifted to R.T.O. building. Since the Kharang Division was shifted to R.T.O. office premises, the R.T.O. office has to be shifted to the Depot premises.

8. Learned Addl. Advocate General also contended that at present about 150 heavy vehicles/buses enter into the bus

stand every day and with the shifting of R.T.O. about 10-15 heavy vehicles will be added in this figure. It is also contended that due care and precautions will be taken by the traffic police to see that there is no unnecessary movement of heavy vehicles in the area concerned. It is also contended that even otherwise after shifting of the R.T.O. to the new place, the R.T.O. has a plan of closing the depot premises falling in front of Rajeev Plaza Market Complex and the opening will be provided from Link Road, Near CMD College Road. It is further contended that some encroachments are there and the respondents would take suitable steps in due course and would provide easy access to the vehicles to the R.T.O. from the Link Road and not from the Bus Stand side.

9. Learned Addl. Advocate General contended that this is a policy decision. He submitted that the decision has not been taken recently but it is taken long back. He referred to a decision of this Court in the case of *Rajkumar Singh –v- State of Chhattisgarh and others* reported in *2004(2) C.G.L.J. 220*. Paragraphs 27, 28 and 29 are relevant and quoted below:-

> "27. *Now, coming to the question of judicial review, where the High Court is to be located, it is primarily within the domain and realm of the Government to decide, of-course, with the consultation with the High Court and that has been done. No individual or private person has a right to ask the Government to establish the High Court at a particular place. Primarily it is a policy decision and the Court is not entitled to interfere with the policy decision. In this connection, we are*

fortified in our view by the judgment of the Hon'ble Apex Court in the matter of Balco Employees' Union (Regd.) Vs. Union of India and Others (2002)2 SCC 333) in which the Hon'ble Apex Court held that "in the policy decision matters the Court has no power to exercise the power of judicial review." Similarly, in the matter of Union of India & Others Vs. Kannadapara Sanghatanegala Okkuta & Kannadigara & Others (2002) 10 SCC 226), the Hon'ble Apex Court has held that "there are various factors which have to be taken into consideration when a decision like this has to be arrived at. Assuming that the decision so taken is a political one, it cannot possibly give rise to a challenge on the ground of legal malafides. A political decision, if taken by a competent authority in accordance with law, cannot per se be regarded as mala fide. In any case, there is nothing on record to show that the present decision was motivated by political consideration. In this case the Central Govt. took a decision to establish railways headquarters at Bangalore, before notification could be issued, the Central Government decided to establish that headquarter at Hubli which was challenged before the High Court. The High Court quashed the decision and the matter went upto the Supreme Court and Hon'ble Apex Court while reversing the High Court's judgment held that in the matter of policy decision taken by the Government, the High Court is not entitled to exercise the power of judicial review and held that it is not function of the Court to decide the location of the site of the headquarters. It is the function of the Government.

28. In *Narmada Bachao Aandolan's* case {2000(10)SCC664}, commenting on the scope of judicial review in PIL cases, the Apex Court held that : *"In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally, such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in inflict with any law or is not mala fide, it will not been public interest to require the Court to go into and investigate those area, which are the function of the executive, for any project which is approved after due deliberation the Court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the*

undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.'

29. Moreover, in the present case no legal mala fides or any political motive has been alleged, proved or established that the respondents have any legal mala fides in selecting the new site for construction of the High Court building. As has been held in Narmada Bachao Aandolan's case when two more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such policy decision. Therefore, on this ground also this writ petition is liable to be dismissed."

10. Shri Verma contended that so far as inspection of heavy vehicles to be made by the R.T.O. and the officials are concerned, instead of bringing them all through Link Road to the R.T.O. office, arrangement may be made for checking them outside. So far as this aspect is concerned, State in its return has come out with the case that adequate steps have been taken. Nevertheless, this Court is having no doubt that all steps will be taken by the authorities concerned and no directions are required at this stage.

11. Learned counsel for the petitioner contended about the traffic hazard. So far as the traffic and safety measures are concerned, the State shall ensure smooth traffic, sufficient police will be posted duly equipped with vehicles and wireless and the authorities will see that there is no traffic hazard. Suffice it to say that this Court has dealt with the

matter in great detail in the case of *Office Reference Regarding Road Accidents* reported in *2002(2) CGLJ 1* and certain guidelines have been issued. Para 30 of the case is relevant and quoted below:-

> *"30. The ultimate duties and responsibility lies in the public and the State Functionaries, looking to the seriousness of the matter the Court is only highlighting the situation, and by this order is trying to draw attention towards the law on the point, duties and obligations of the public, State functionaries and the State. This Court does not want to legislate or otherwise and would like to emphasize that in a decision Union of India Vs. Association for Democratic Reforms and Another (2002 AIR SCW 2186) even the apex Court has taken the view that 'it is not possible for the Supreme Court to give any directions for amending the Act or the statutory Rules. It is for the Parliament to amend the Act and the Rules. It is also established law that no direction can be given which would be contrary to the Act and the Rules. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the Authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders to the said subject to fill the vacuum or void till the suitable law is enacted." It is for the authorities to do. The Courts have their own limitations. So far as this Court is concerned it has only highlighted the situation and it is for the executives and the legislature to do the needful."*

12. In view of the facts and circumstances narrated above, we are of the considered opinion that shifting is a policy decision and before exercising that, the State authorities have considered all the aspects. The scope of judicial review is limited. So far as the safeguards are concerned, the return of the State shows that the authorities are conscious and the plans have been prepared. It is well settled that where a particular office is to be located, it is primarily within the domain and realm of the Government to decide.

No individual or private person has a right to ask the Government to establish the Government office at a particular place and this principle fully applies with the office of R.T.O. so far as traffic hazard etc. is concerned. Much depends upon the co-operation of the public as well. This Court has issued directions from time to time and observations made hereinabove would also certainly be helpful. The authorities will also take care of.

13. Subject to what has been stated above, this petition stands disposed of.

Sd/-
Fakhruddin
Judge

Sd/-
V.K.Shrivastava
Judge

27-4-2005

G/P/H

Received
Copy issued
3/5/05